

IN THE UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO

| | | |
|--|---|----------------------------------|
| In re: |) | CASE NO: 09-53190 |
| |) | Chapter 13 |
| Frank Paul Toplovich |) | |
| |) | ADVERSARY NO : |
| Janice Childrey Toplovich fka Janice C. Kovacs |) | |
| |) | Judge Marilyn Shea-Stonum |
| Debtor(s). |) | |
| |) | <u>COMPLAINT TO DETERMINE</u> |
| Frank Paul Toplovich |) | <u>THAT CLAIM OF HUNTINGTON</u> |
| Janice Childrey Toplovich fka Janice C. Kovacs |) | <u>NATIONAL BANK, IF ANY, IS</u> |
| 8850 Freedom Rd. |) | <u>A GENERAL UNSECURED</u> |
| Windham, OH 44288 |) | <u>CLAIM</u> |
| |) | |
| Plaintiffs |) | |
| v. |) | |
| |) | |
| Huntington National Bank |) | |
| 41 S. High St., Huntington Center |) | |
| Columbus, OH 43215-6101 |) | |
| |) | |
| Defendant. |) | |

Frank Paul Toplovich and Janice Childrey Toplovich, the plaintiffs herein, by and through the undersigned counsel, for their complaint against Huntington National Bank, allege as follows:

1. This is a core proceeding over which this Court has jurisdiction under 28 U.S.C. Sec. 157(b).
2. The plaintiffs are debtors in this chapter 13 case. The defendant, Huntington National Bank, claims or may claim to hold a secured claim against the debtors by virtue

of a mortgage in the original amount of \$22,000.00 and recorded with the Portage County, Ohio Recorder on October 9, 2001 and designated as instrument 200127817 in the records of the Portage County, Ohio Recorder. Upon information and belief, the debtors state that they owe an approximate principal balance of \$22,000.00 on this indebtedness.

3. The alleged mortgage owed to the defendant was intended to be a second mortgage and must be equitably subrogated to any claim of the first mortgage of CitiMortgage, Inc., a creditor in this case. The alleged mortgage referred to in paragraph two (2) above encumbers the plaintiffs' residential real estate located at 8850 Freedom Rd., Windham, Ohio.

4. CitiMortgage, Inc. holds the first mortgage encumbering the plaintiffs' residential real estate. This mortgage, in the original amount of \$140,002.00 was recorded on December 11, 2002 and was recorded as instrument 200238460 in the Portage County, Ohio Records. According to proof of claim 9-1 filed by this creditor, an approximate principal balance of \$145,631.95 is owed by the debtors on this first mortgage.

5. The value of the plaintiffs' above-referenced real estate, according to the appraisal of the Portage County, Ohio Auditor, attached hereto as Exhibit "A," is \$108,400.00.

6. Under the reasoning of *Lane v. Western Interstate Bancorp (In re Lane)*, 280 F.3d 663 (6th Cir. 2002), the plaintiffs' obligation to the defendant is a wholly unsecured claim and, as such, is subject to lien stripping.

WHEREFORE, the plaintiffs request the entry of an order declaring that their obligation owed to the defendant, if any, is a wholly unsecured claim and must be allowed and paid as a general unsecured creditor inside the plan. The plaintiffs further are entitled to a judgment declaring that the above-referenced mortgage is null, void and without any legal effect whatsoever.

/s/ Robert M. Whittington, Jr.

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Portage County, Ohio

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Summary

| Parcel ID | Address | Index Order | Card |
|----------------------|--------------|-------------|--------|
| 18-055-00-00-010-000 | 8850 FREEDOM | Owner | 1 of 1 |

Summary

| | | | |
|--------------------------|---|--------------------------------|------|
| Property Location | 8850 FREEDOM | Story Height | 2.00 |
| Tax District | 18 FREEDOM TWP - GARFIELD LSD | Finished Square Footage | 1736 |
| Land Use | 511 Single family Dwlg Unplat 0-09.99 acres | Year Built | 1967 |
| Neighborhood | 19000 | Total Rooms | 6 |
| Acres | 2.040 | Full Bathrooms | 1 |
| Tax Year | 2009 | Half Bathrooms | 0 |
| | | Bedrooms | 3 |

Legal Description

Property Information
LOT 56 SE

**Owner Information**

Owner Information
KOVACS JANICE C & FRANK
P TOPLOVICH
8850 FREEDOM RD
WINDHAM, OH 44288 USA

Mail Information

KOVACS JANICE &
TOLOVICH FRANK
8850 FREEDOM RD
WINDHAM, OH 44288 USA

Assessment Info

| | |
|-----------------------------|-----|
| Board of Revision | No |
| Homestead/Disability | Yes |
| 2.5% Reduction | Yes |
| Divided Property | No |
| New Construction | No |
| Foreclosure | No |
| Other Assessments | Yes |
| Front Ft. | 0 |

| | |
|-------------------------|-----------|
| Mkt. Land | \$30,000 |
| Cauv Value | \$0 |
| Mkt. Improvement | \$78,400 |
| Total | \$108,400 |

| | |
|---------------------|------------|
| Annual Taxes | \$1,234.88 |
| Taxes Paid | \$0.00 |

Recent Sale

| | |
|-------------------------|-----|
| Arms Length Sale | No |
| No. of Parcels | 1 |
| Deed Type | 0 |
| Sale Amount | \$0 |

| | |
|-----------------------|-----------|
| Sale Date | 4/11/2002 |
| Conveyance No. | 0 |
| Deed Number | 884 |

User ID : Guestportage

Data updated on 02/14/2010